IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

WP(C).No. 6981 of 2007(F)

PETITIONER:

HARIDASAN MUTHUKOTE, AGED 53 YEARS,
S/O. KUNHIRAMAN, MUTHUKOTE HOUSE, P.O. ASOKAPURAM,
KOZHIKODE-673 001.

BY ADV. SRI.MANJERI SUNDERRAJ
SMT.SUSAN JACOB

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY STATION HOUSE OFFICER, NADAKKAVU POLICE
STATION (CRIME FIR NO.68 OF 2007 GRIL MISSING),
NADAKKAVU, KOZHIKODE DISTRICT.

2. THE SECRETARY TO GOVERNMENT,
HOME MINISTRY, GOVERNMENT OF KERALA, TRIVANDRUM.

3. P. VIBEESH, AGED 29 YEARS,
SON OF VALSAN, "ARCHANA", NAYEDATHU HOUSE,
KOLAYITHAZHAM, POST KARANTHOOR, KOZHIKODE.

4. SHIBI, AGED ABOUT 32 YEARS,
DAUGHTER OF BALAN, WOMAN CONSTABLE,
KASABA POLICE STATION, CALICUT-673 004.

5. SRI LAKSHMI, AGED 21 YEARS,
D/O. HARIDASAN MUTHUCODE, MUTHUCODE HOUSE,
POST ASOKAPURAM, CALICUT.

R1 & 2 BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

W.P.(C) NO. 6981 OF 2007-F

Dated this the 5th day of March, 2007

JUDGMENT

The petitioner is the father of a girl aged about 21 years, who has allegedly been abducted by a person who claims to have married her subsequently in accordance with law. A crime was registered on the basis of the complaint made by the uncle of the girl in the absence of the petitioner who is employed abroad. The alleged abducted girl was produced before the learned Magistrate and on her statement that she is married and that she is living with her husband and she is not under any confinement, she was set at liberty permitting her to exercise her option to go with her husband. The petitioner is aggrieved by the procedure followed by the learned Magistrate. According to the petitioner, the girl would not have given her voluntary consent for the marriage. The petitioner has a further grievance that the learned Magistrate did not imbibe the spirit of the decision in **Sreekesh v. Mohammed Ashraf** (2003 (1) KLT 397). It is his grievance

that the learned Magistrate had not diligently exercised the duty on the Magistrate when such an alleged abducted victim is produced before the court.

2. The order passed by the learned Magistrate was not produced along with this petition. At the request of the petitioner, a copy of the order and the proceedings of the learned Magistrate were called for by this Court as per order dated 28/2/07. The report of the learned Magistrate has not been received; but when the matter came up for hearing today, the learned counsel for the petitioner submits that this petition need not be kept any longer as the police, after investigation, has now filed a final report before the learned Magistrate with an endorsement that further action is dropped. The learned counsel for the petitioner submits that the petitioner as well as the de facto complainant – the uncle of the girl, who lodged the complaint in the absence of the petitioner shall appear before the learned Magistrate and raise their objections against the final report submitted by the police. Leaving that option open to the petitioner, further proceedings may be dropped in this writ petition and this writ petition may be dismissed, it is submitted.

3. Though technically, the petitioner is not the de facto complainant entitled to notice when reference is made by the police and the refer report is considered by the learned Magistrate, I am satisfied that in the peculiar facts and circumstances, the petitioner as well as his brother-in-law, who lodged the complaint, must be given an opportunity to raise his objections against the refer report submitted the police.

4. Leaving open that option of the petitioner, this writ petition is dismissed. Needless to say that the petitioner as well as his brother in law shall be entitled to urge all their contentions including the contention that the dictum in **Sreekesh** referred above has not been diligently followed by the learned Magistrate.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge